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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,987	02/08/2002	Jesse H. Gaytan	41775	9925
1609	7590	07/12/2007	EXAMINER	
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.			MOSS, KERI A	
1300 19TH STREET, N.W.				
SUITE 600			ART UNIT	PAPER NUMBER
WASHINGTON,, DC 20036			1743	
MAIL DATE		DELIVERY MODE		
07/12/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/067,987	GAYTAN, JESSE H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Keri A. Moss	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 April 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-25 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-25 and 35-39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

**DETAILED ACTION**

1. Applicant's amendment filed April 18, 2007 is hereby acknowledged. Claims 1,3-25 and 35-39 are pending.

***Response to Amendment***

2. The non-election of claims 40-47 has been maintained.

Rejection of claims 1, 3-13 and 35-38 under 35 USC 112, second paragraph have been withdrawn in light of applicant's amendments and arguments.

Rejection of claims 1, 3-25 and 25-29 under 35 USC 103(a) have been maintained.

Double Patenting Rejection has been withdrawn in light of applicant's arguments.

***Election/Restrictions***

3. Claims **40-47** have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 18, 2007.

4. Applicant's traverse of the non-election by original presentation in the reply filed on April 18, 2007 is acknowledged. The traversal is on the ground(s) that the claims examined in the application do not recite a drying step. This is not found persuasive because the process claims examined in the office action mailed January 12, 2006 required a drying step. While these original process claims have been withdrawn due to

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the subsequent restriction requirement, the argument that this process had not been previously examined still holds.

Applicant argues that regardless of the process, the product claims do not recite a drying step. Claims 40-47 are also distinct from the originally claimed product because the original claims require one or more of sulfur-containing active ingredient solids and a solvent for the active ingredient while the new claims do not.

The requirement is still deemed proper and is therefore made FINAL.

#### *Claim Interpretation*

5. Claims **24, 25, 37-39 and 44-47** are product-by-process claims. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. MPEP § 2113. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP § 2113.

#### *Claim Rejections - 35 USC § 103*

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims **1, 3-11, 14-21, 24-25 and 35-39** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings et al. (USP 6,337,323) in view of Neumann (USP 5,645,845). This rejection is maintained as of record and will not be repeated here.

Applicants, citing various sections of Cummings argue that Cummings does not disclose or suggest reducing the odor of sulfur-containing active ingredients using a terpene or oxygenated derivative. It appears that Cummings does not specifically assign the cause of the odors coming from the insecticidally active composition. The Examiner disagrees with the applicants' interpretation of Cummings column 6 lines 27-28 as discussing reducing odors associated with the solvent. This section of Cummings reveals a decreased odor results from the present formulation, but Cummings does not explain what has caused the decreased odor. Despite the lack of assignment, as stated by applicants on page 10 in the response filed April 18, 2007 "[I]t is known that sulfur-containing actives, and particularly acephate, have a strong and offensive odor that are very difficult to mask." Thus, it is reasonable to infer that the odor that Cummings talks about decreasing in column 20 lines 29-31 is that coming from the strong and offensive-smelling sulfur-containing actives. While Cummings does not use the term "masking," Cummings is clearly addressing in column 6 lines 27-28 and column 20 lines 29-31 this fact that the sulfur-containing actives have an odor and that decreasing that odor is an advantage to be sought. Absent evidence to the contrary, the Examiner interprets these sections of Cummings as discussing agents that decrease the objectionable odors coming from the sulfur-containing active ingredient. Applicants are reminded that attorney arguments cannot take the place of evidence. MPEP § 716.01(c).

The Examiner addressed applicant's instant arguments regarding Neumann and the suggestion to combine Cummings with Neumann as well as the expectation of

success in pages 9-11 of the Office Action mailed January 18, 2007. These arguments are maintained.

8. **Claims 12-13 and 22-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings and Neumann in view of Lew (EP 0 755 626 A1). This rejection is maintained as of record and will not be repeated here.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keri A. Moss whose telephone number is 571-272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keri A. Moss  
Examiner  
Art Unit 1743

KAM 6/9/07



LYLE A. ALEXANDER  
PRIMARY EXAMINER